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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

Estate of ADRIA W. GARABEDIAN.
Deceased.

MICHAEL GARABEDIAN, as Executor, etc.,
Petitioner and Appellant,

v.

BENJAMIN RASSBACH GARABEDIAN, etc.,
Objector and Respondent;

CHILD SUPPORT SERVICES,
Claimant and Respondent.

C041407
(Sup.Ct.No. 00PR00933)

Petitioner Michael Garabedian was executor of the will of his deceased mother and custodian for his minor son Benjamin, a beneficiary under the will. Garabedian appeals from several orders that reflect his long dispute with Elsa Rassbach, the mother of his son. Garabedian contends the probate court erred (1) in granting the petition for declaratory relief that an objection to Garabedian as custodian would not violate the no

contest clause of the will, (2) in denying his petition to remove Benjamin's guardian ad litem, (3) in ordering a distribution to satisfy a lien for child support, and (4) in publishing court notes that were prejudicial to Garabedian. Finding the various portions of the appeal are untimely, barred by the dismissal of an earlier appeal, or not from an appealable order, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Adria Garabedian died testate on June 9, 2000. Her will nominated her son as executor and left her estate to five beneficiaries equally: her son, her daughter, and three grandchildren. In a codicil to the will she left her gift to Benjamin, the only grandchild who was a minor, to Garabedian as custodian. The will also contained a no contest clause.

The administration of the estate was marked by considerable litigation. Garabedian's sister petitioned for declaratory relief for a determination under Probate Code section 21320 whether a challenge to Garabedian as executor would violate the will's no contest provision. The court ruled it would.

Elsa Rassbach, Benjamin's mother, petitioned ex parte to be appointed guardian ad litem for her 16-year-old son, with Benjamin's written consent. Garabedian vigorously objected, in large part due to the animosity between himself and Rassbach. He claimed that since Benjamin was two years old, and because he established paternity and sought access to his son, Rassbach "viciously attacks, hurts, and in some cases destroys me and anything or anyone dear to me, including my friends, employer,

finances and family." He believed Rassbach as guardian ad litem would harm his and Benjamin's relationship, and he was concerned Rassbach would act in her own, rather than Benjamin's, interest. Because of Garabedian's objections, the court denied the petition and ruled that Rassbach would have to file a noticed petition if she sought to be appointed guardian ad litem.

The dispute over who would look out for Benjamin's interests continued. A substitution of attorney was filed, purporting to substitute Judy Carver as Benjamin's attorney. Garabedian petitioned for instructions to permit him not to recognize Carter as Benjamin's attorney, claiming that in effect Rassbach would be representing Benjamin. After numerous papers for and against Carver's representation were filed, including 16-year-old Benjamin's declaration that he wanted Carver to represent him, the court appointed Carver as Benjamin's temporary guardian ad litem. Garabedian continued to object because Carver was "hand-picked" by Rassbach.

Garabedian petitioned to make a preliminary distribution from the estate. He proposed to distribute \$75,000 to each of the beneficiaries except himself and to pay certain claims. Again, there were objections. Both Garabedian's sister and Benjamin objected. They wanted production of documents used to prepare the accounting so they could determine whether Garabedian had made inappropriate use of funds for his own purpose.

Benjamin, through his guardian ad litem, petitioned for declaratory relief for a determination of whether an objection

for cause to Garabedian as custodian for Benjamin violated the no contest clause of the will.

This petition and other matters were heard on November 30, 2001. The probate court noted the accounting was "an extraordinarily difficult, if not impossible, document to follow." Because the parties could not agree on the disclosure of documents to support the accounting, that matter was continued. The court ruled an objection to Garabedian as custodian could be made if it was not frivolous without violating the no contest provision of the will. A frivolous objection would violate the no contest provision. Garabedian asked for a statement of decision; the court told him to prepare it. The minute order granting the petition for declaratory relief did not direct preparation of a formal order.

The court suggested the preliminary distribution be made and a bond required. Garabedian suggested a blocked account as a less expensive alternative to a bond. The parties agreed to a blocked account.

Finally, the guardian ad litem raised an issue as to whether her appointment was temporary or permanent. Garabedian indicated he had concerns that the guardian was wasting his son's inheritance. The probate court made the appointment permanent and told Garabedian that if he had objections to submit them in writing.

Garabedian proposed a distribution to himself as beneficiary of \$75,000, with \$40,000 withheld to satisfy a lien for unpaid child support. The Sacramento County District

Attorney's office filed an opposition. The District Attorney had filed a notice of lien under a New York money judgment for unpaid child support for \$37,000, with \$246 accruing biweekly. The registration of the foreign judgment and the lien were updated to show the amount due as \$52,136.40. In the opposition to the proposed distribution, the District Attorney requested that \$53,000 be withheld from any distribution to Garabedian pursuant to the lien, and sought a distribution of \$52,136.40 to the District Attorney in satisfaction of the registered judgment.

The probate court ordered a distribution of \$75,000 to Garabedian as custodian for Benjamin, with the funds to be held in a blocked account. The court also ordered payment of \$52,136.40 to the District Attorney to satisfy the lien. The court granted Garabedian's petition to modify the order to extend the date the payment was due. The extension was in accord with the order of another court that was considering Garabedian's challenge to the registration of the judgment and the lien.

Garabedian petitioned to remove the guardian ad litem, arguing Benjamin was pressured into accepting Carver to represent him. Garabedian claimed Carver was not properly representing Benjamin's interests, and had a conflict of interest, citing various disputes over Benjamin's visitation with him. The petition was heard just a few months before Benjamin turned 18 and the court reprimanded Garabedian for not bringing it earlier. "I think this is really a superfluous

motion. It's almost vexatious, Mr. Garabedian." The court denied the petition.

On February 25, 2002, just days after the above rulings, Garabedian filed a notice of appeal. He appealed from numerous orders, including the distribution of \$52,136.40, the appointment of Benjamin's guardian ad litem, and the denial of the petition to remove the guardian ad litem. This court dismissed the appeal for Garabedian's failure to make a timely designation of the record.¹ (*Garabedian v. Rassbach* (March 27, 2002, C040558) [nonpub. opn.].) On June 11, 2002, Garabedian filed a second notice of appeal raising the issues noted above.

DISCUSSION

I

Garabedian contends the probate court erred in ruling that a challenge to him as custodian for Benjamin would not violate the no contest clause of the will. Benjamin had sought this ruling in a declaratory relief action under Probate Code section 21320, subdivision (a), which permits a beneficiary to apply for a determination of whether a particular motion, petition or other act would violate a no contest clause.

Benjamin contends an appeal from this ruling is not timely. A ruling on whether an action is a contest is appealable. (Prob. Code, § 1303, subd. (j).) A notice of appeal must be

¹ We take judicial notice of our records pursuant to Evidence Code section 452, subdivision (d). We requested and received supplemental briefing from the parties on the effect of the dismissal of the prior appeal on this appeal.

filed on or before the earliest of three dates. (Cal. Rules of Court, rule 2(a).) The first two dates are in reference to the mailing or service of a document entitled "Notice of Entry of Judgment." Since there was no such document in this case, the third date is the operative one; the notice of appeal must be filed on or before 180 days after entry of judgment. (*Id.*, rule 2(a)(3).)

The entry date of an appealable order is the date that it is entered in the permanent minutes. (Cal. Rules of Court, rule 2(c)(2).) The court made its oral ruling and the minute order was entered on November 30, 2001. Garabedian's notice of appeal was filed on June 11, 2002, more than 180 days later, so it was not timely.

Garabedian contends his notice of appeal was timely because the formal, signed order was not filed until February 21, 2001. Garabedian contends the filing of the minute order did not commence the 180-day period because there was to be a formal order. Garabedian requested a statement of decision and the court told him to prepare it. The entry date of an appealable order is the date the signed order is filed if "the minute order directs that a written order be prepared." (Cal. Rules of Court, rule 2(c)(2).) The minute order did not direct that a written order be prepared. The formal, signed order was not prepared by Garabedian and did not contain any findings of fact. Instead, it was an order prepared by the prevailing party, pursuant to rule 391 of the California Rules of Court. Such an order is not one prepared by direction of a minute order and

does not extend the time for filing an appeal. (Cal. Rules of Court, rule 2(c)(2).) Garabedian's notice of appeal was not timely.

Garabedian calls attention to his initial notice of appeal, filed February 25, 2002, and contends the 180-day period was tolled while this appeal was pending. Garabedian cites to no authority to support this proposition. Under Probate Code section 1310, an appeal stays the operation and effect of the judgment or order. Garabedian did not appeal from the order declaring a challenge to his status as custodian was not in violation of the no contest clause. If he had, no second appeal would lie from the same order because the first appeal was dismissed. "The dismissal of an appeal shall be with prejudice to the right to file another appeal within the time permitted, unless the appeal is expressly made without prejudice to another appeal." (Code Civ. Proc., § 913.) This court's dismissal of the first appeal on March 27, 2002, was not expressly without prejudice.

II

Garabedian's first notice of appeal indicated that he was appealing, *inter alia*, from the denial of his petition to remove the guardian ad litem and the orders requiring a distribution of \$52,136.40 to the District Attorney's Office in satisfaction of the lien. He attempts to appeal from these same orders in this appeal, contending the guardian ad litem had a conflict of interest and provided poor service for Benjamin, and the

District Attorney failed to file a separate petition as required by Superior Court of Sacramento County, Local Rules, rule 15.05.

Garabedian is not entitled to a second bite at the apple. An appeal from these orders is barred by the dismissal of Garabedian's first appeal. (Code Civ. Proc., § 913.)

In his supplemental letter brief, Garabedian contends that because the record is now before the court on appeal, the orders previously appealed from should be contemporaneously decided. He relies on *Thornburg v. Rais* (1950) 100 Cal.App.2d 735. In *Thornburg*, the court denied a motion to dismiss an appeal for failure to timely file the record. The court noted the circumstances that made the delay excusable and that other pending appeals were closely related and arose from the same controversy so it would be advantageous to decide all the appeals contemporaneously. (*Id.* at p. 738.) *Thornburg* is of no assistance to Garabedian. There, the appellant sought relief from his failure to file the record before his appeal was dismissed. Garabedian did not; he allowed his first appeal to be dismissed with prejudice.

Garabedian next contends, "CCP 913 does not vitiate a statutory appeal that is subject to a statutory stay." He cites to *Gold v. Superior Court* (1970) 3 Cal.3d 275. In *Gold*, the Supreme Court held that under Probate Code section 2102 an appeal from an order of the probate court made in a conservatorship proceeding automatically stays the operation and effect of the order appealed from, even if the appeal is frivolous. (*Id.* at pp. 285-287.) The court did not consider

the effect of Code of Civil Procedure section 913 on such an appeal. And nothing in *Gold* suggests that dismissal of an appeal does not bar a subsequent appeal simply because a stay was in effect.

Finally, Garabedian contends his second appeal should be decided because he has raised matters of broad public interest. His reliance on *County of Fresno v. Shelton* (1998) 66 Cal.App.4th 996 is misplaced. In *Shelton*, the court stated there is an exception to the rule that a court will not decide cases that are moot if the case poses an issue of broad public interest that is likely to recur. (*Id.* at p. 1006.) The court did not state this exception also applies to an appeal that has been dismissed with prejudice. In any event, this case would not qualify for such an exception. The dismissal of the previous appeal bars a second appeal from the same orders.

III

Finally, Garabedian challenges the content of Probate Court Calendar Notes that are published on the Sacramento County Court web site. He contends the court staff has no authority "to make unnecessarily accusatory, conclusive and judgmental comments in calendar notes."

In California the right of appeal is statutory and an appeal may lie only from those judgments or orders expressly made appealable by statute. (*H. D. Arnaiz, Ltd. v. County of San Joaquin* (2002) 96 Cal.App.4th 1357, 1365.) Garabedian cites to no statute that makes the content of calendar notes appealable. They are not orders made appealable by Probate Code

sections 1300 and 1303. Garabedian requests that this court exercise its discretion and "review this important issue." We have no discretion to entertain an appeal that is not authorized by statute.

DISPOSITION

The orders are affirmed.

_____, MORRISON, Acting P.J.

We concur:

_____, HULL, J.

_____, ROBIE, J.